

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 165

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO SEX OFFENDER REGISTRATION; REVISING DEFINITIONS;  
ADDING NEW OFFENSES TO REGISTRATION REQUIREMENTS; LENGTHENING  
REGISTRATION PERIODS FOR CERTAIN OFFENDERS; REQUIRING  
ADDITIONAL NOTIFICATION AND REGISTRATION INFORMATION; EXPANDING  
NOTICE REQUIREMENTS TO SEX OFFENDERS; REQUIRING DNA SAMPLES;  
ESTABLISHING THE SEX OFFENDER DNA IDENTIFICATION SYSTEM;  
PREEMPTING SEX OFFENDER REGISTRATION AND NOTIFICATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 29-11A-3 NMSA 1978 (being Laws 1995,  
Chapter 106, Section 3, as amended) is amended to read:

"29-11A-3. DEFINITIONS.--As used in the Sex Offender  
Registration and Notification Act:

A. "conviction" means a conviction in any court of  
competent jurisdiction and includes a deferred sentence, but

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1 does not include a conditional discharge;

2 B. "institution of higher education" means a:

3 (1) private or public post-secondary  
4 educational institution;

5 (2) trade school; or

6 (3) professional school;

7 C. "registration requirement" means any requirement  
8 set forth in Section 29-11A-4 NMSA 1978 that requires a sex  
9 offender to register, provide information, including a DNA  
10 sample, renew, revise or change his registration information or  
11 provide written notice or disclosure regarding his status as a  
12 sex offender;

13 ~~[A.]~~ D. "sex offender" means a person [eighteen  
14 years of age or older] who:

15 (1) is a resident of New Mexico who is  
16 convicted of a sex offense in New Mexico;

17 (2) changes his residence to New Mexico, when  
18 that person has been convicted of a sex offense in another  
19 state pursuant to state, federal, tribal or military law;

20 (3) is a resident of New Mexico who is  
21 convicted of a sex offense pursuant to federal, tribal or  
22 military law; ~~[or]~~

23 (4) does not have an established residence in  
24 New Mexico, but lives in a shelter, halfway house or  
25 transitional living facility or stays in multiple locations in

1 New Mexico and who has been convicted of a sex offense in New  
2 Mexico or any other state pursuant to state, federal, tribal or  
3 military law; or

4 [~~4~~] (5) is a resident of another state and  
5 who has been convicted of a sex offense pursuant to state,  
6 federal, tribal or military law, but who is:

7 (a) employed full time or part time in  
8 New Mexico for a period of time exceeding fourteen days or for  
9 an aggregate period of time exceeding thirty days during any  
10 calendar year, including any employment or vocation, whether  
11 financially compensated, volunteered or for the purpose of  
12 government or educational benefit; or

13 (b) enrolled on a full-time or part-time  
14 basis in a private or public school or an institution of higher  
15 education in New Mexico [~~including a secondary school, a trade~~  
16 ~~school, a professional institution or an institution of higher~~  
17 ~~education~~]; and

18 [~~B.~~] E. "sex offense" means:

19 (1) criminal sexual penetration in the first,  
20 second, third or fourth degree, as provided in Section 30-9-11  
21 NMSA 1978;

22 (2) criminal sexual contact in the fourth  
23 degree, as provided in Section 30-9-12 NMSA 1978;

24 (3) criminal sexual contact of a minor in the  
25 second, third or fourth degree, as provided in Section

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1 30-9-13 NMSA 1978;

2 (4) sexual exploitation of children, as  
3 provided in Section 30-6A-3 NMSA 1978;

4 (5) sexual exploitation of children by  
5 prostitution, as provided in Section 30-6A-4 NMSA 1978;

6 (6) kidnapping, as provided in Section  
7 30-4-1 NMSA 1978, when the victim is less than eighteen years  
8 of age and the offender is not a parent of the victim;

9 (7) false imprisonment, as provided in Section  
10 30-4-3 NMSA 1978, when the victim is less than eighteen years  
11 of age and the offender is not a parent of the victim;

12 (8) aggravated indecent exposure, as provided  
13 in Section 30-9-14.3 NMSA 1978;

14 (9) enticement of child, as provided in  
15 Section 30-9-1 NMSA 1978;

16 (10) incest, as provided in Section 30-10-3  
17 NMSA 1978, when the victim is less than eighteen years of age;

18 [~~8~~] (11) solicitation to commit criminal  
19 sexual contact of a minor in the second, third or fourth  
20 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;  
21 or

22 [~~9~~] (12) attempt to commit any of the sex  
23 offenses set forth in Paragraphs (1) through [~~7~~] (10) of this  
24 subsection, as provided in Section 30-28-1 NMSA 1978."

25 Section 2. Section 29-11A-4 NMSA 1978 (being Laws 1995,

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1 Chapter 106, Section 4, as amended) is amended to read:

2 "29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION  
3 REQUIRED--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

4 A. A sex offender residing in this state shall  
5 register with the county sheriff for the county in which the  
6 sex offender resides.

7 B. A sex offender who is a [~~current~~] resident of  
8 New Mexico shall register with the county sheriff no later than  
9 ten days after being released from the custody of the  
10 corrections department, a municipal or county jail or a  
11 federal, military or tribal correctional facility or detention  
12 center or being placed on probation or parole. A sex offender  
13 who changes his residence to New Mexico shall register with the  
14 county sheriff no later than ten days after [~~establishing~~  
15 ~~residence~~] his arrival in this state. When a sex offender  
16 registers with the county sheriff, he shall provide the  
17 following registration information:

18 (1) his legal name and any other names or  
19 aliases that he is using or has used;

20 (2) his date of birth;

21 (3) his social security number;

22 (4) his current address;

23 (5) his place of employment;

24 (6) the sex offense for which he was  
25 convicted; and

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1 (7) the date and place of his sex offense  
2 conviction.

3 C. A sex offender who is a resident of another  
4 state but who is employed in New Mexico or attending public or  
5 private school or an institution of higher education in New  
6 Mexico shall register with the county sheriff for the county in  
7 which the sex offender is working or attending school or an  
8 institution of higher education.

9 D. A sex offender who is a resident of another  
10 state but who is employed in New Mexico or attending public or  
11 private school or an institution of higher education in New  
12 Mexico shall register with the county sheriff no later than ten  
13 days after beginning work or school. When the sex offender  
14 registers with the county sheriff, he shall provide the  
15 following registration information:

16 (1) his legal name and any other names or  
17 aliases that he is using or has used;

18 (2) his date of birth;

19 (3) his social security number;

20 (4) his current address in his state of  
21 residence and, if applicable, the address of his place of  
22 lodging in New Mexico while he is working or attending school  
23 or an institution of higher education;

24 (5) his place of employment or the name of the  
25 school he is attending;

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1 (6) the sex offense for which he was  
2 convicted; and

3 (7) the date and place of his sex offense  
4 conviction.

5 E. When a sex offender registers with a county  
6 sheriff, the sheriff shall obtain:

7 (1) a photograph of the sex offender and a  
8 complete set of the sex offender's fingerprints; [~~and~~]

9 (2) a description of any tattoos, scars or  
10 other distinguishing features on the sex offender's body that  
11 would assist in identifying the sex offender; and

12 (3) a sample of his DNA for inclusion in the  
13 sex offender DNA identification system pursuant to the  
14 provisions of the DNA Identification Act.

15 F. When a sex offender who is registered changes  
16 his residence within the same county, the sex offender shall  
17 send written notice of his change of address to the county  
18 sheriff no later than ten days after establishing his new  
19 residence.

20 G. When a sex offender who is registered changes  
21 his residence to a new county in New Mexico, the sex offender  
22 shall register with the county sheriff of the new county no  
23 later than ten days after establishing his new residence. The  
24 sex offender shall also send written notice of the change in  
25 residence to the county sheriff with whom he last registered no

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1 later than ten days after establishing his new residence.

2 H. When a sex offender who is registered or  
3 required to register does not have an established residence,  
4 but lives in a shelter, halfway house or transitional living  
5 facility or stays in multiple locations in New Mexico, the sex  
6 offender shall register with the county sheriff for each county  
7 in which the sex offender is living or temporarily located.  
8 The sex offender shall register no later than ten days after a  
9 change in his living arrangements or temporary location.

10 I. When a sex offender who is registered or  
11 required to register is employed, begins a vocation or is  
12 enrolled as a student at an institution of higher education in  
13 New Mexico, the sex offender shall disclose his status as a sex  
14 offender in writing to the county sheriff for the county in  
15 which the institution of higher education is located, the law  
16 enforcement entity responsible for the institution of higher  
17 education and the registrar for the institution of higher  
18 education no later than ten days after beginning employment,  
19 beginning a vocation or enrolling at the institution of higher  
20 education. The sex offender shall also send written notice of  
21 any change regarding his employment, vocation or enrollment  
22 status at an institution of higher education to the county  
23 sheriff, the law enforcement entity and the registrar no later  
24 than ten days after the change in his employment, vocation or  
25 enrollment status.

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1           J. When a sex offender who is registered or  
 2 required to register is employed or is enrolled as a student at  
 3 a public or private school in New Mexico, the sex offender  
 4 shall disclose his status as a sex offender in writing to the  
 5 county sheriff for the county in which the school is located  
 6 and to the principal of the school no later than ten days after  
 7 enrolling at the school. The sex offender shall also send  
 8 written notice of any change regarding his enrollment status at  
 9 a school to the county sheriff and the principal no later than  
 10 ten days after the change in his enrollment status.

11           K. When a sex offender who is registered or  
 12 required to register is employed, begins a vocation or  
 13 volunteers his services, regardless of whether the sex offender  
 14 receives payment or other compensation, the sex offender shall  
 15 disclose his status as a sex offender in writing to his  
 16 employer, supervisor or person similarly situated. The written  
 17 disclosure shall be made immediately upon beginning his  
 18 employment, vocation or volunteer service.

19           [H.] L. Following his initial registration pursuant  
 20 to the provisions of this section:

21                   (1) a sex offender required to register  
 22 pursuant to the provisions of Subsection D of Section  
 23 29-11A-5 NMSA 1978 shall [~~annually~~] renew his registration with  
 24 the county sheriff [~~prior to December 31 of each subsequent~~  
 25 ~~calendar year for a period of twenty years~~] not less than once

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1 in each ninety-day period following the date of the sex  
2 offender's initial registration for the entirety of his natural  
3 life; and

4 (2) a sex offender required to register  
5 pursuant to the provisions of Subsection E of Section  
6 29-11A-5 NMSA 1978 shall annually renew his registration with  
7 the county sheriff prior to December 31 of each subsequent  
8 calendar year for a period of ten years.

9 M. Notwithstanding the provisions of Paragraph (2)  
10 of Subsection L of this section, if a sex offender is convicted  
11 a second or subsequent time for a sex offense set forth in  
12 Subsection E of Section 29-11A-5 NMSA 1978, he shall renew his  
13 registration with the county sheriff not less than once in each  
14 ninety-day period following the date of the sex offender's  
15 initial registration for the entirety of his natural life.

16 [~~F.~~] N. A sex offender who willfully or  
17 knowingly fails to comply with the registration requirements  
18 set forth in this section is guilty of a fourth degree felony  
19 and shall be sentenced pursuant to the provisions of Section  
20 31-18-15 NMSA 1978. A sex offender who willfully or knowingly  
21 fails to comply with the registration requirements set forth in  
22 this section after a first or subsequent conviction for a  
23 violation pursuant to this section is guilty of a third degree  
24 felony and shall be sentenced pursuant to the provisions of  
25 Section 31-18-15 NMSA 1978. The willful failure to comply with

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1 any registration requirement set forth in this section shall be  
 2 deemed part of a continuing transaction or occurrence. A  
 3 conviction pursuant to this subsection shall not be considered  
 4 a felony for purposes of the imposition of sentencing  
 5 enhancements pursuant to the provisions of Section 31-18-17  
 6 NMSA 1978.

7 ~~[J-]~~ O. A sex offender who willfully or knowingly  
 8 provides false information when complying with the registration  
 9 requirements set forth in this section is guilty of a fourth  
 10 degree felony and shall be sentenced pursuant to the provisions  
 11 of Section 31-18-15 NMSA 1978. A sex offender who willfully or  
 12 knowingly provides false information when complying with the  
 13 registration requirements set forth in this section after a  
 14 first or subsequent conviction for a violation pursuant to this  
 15 section is guilty of a third degree felony and shall be  
 16 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
 17 1978. The willful providing by a sex offender of false  
 18 information with respect to the registration requirements set  
 19 forth in this section shall be deemed part of a continuing  
 20 transaction or occurrence. A conviction pursuant to this  
 21 subsection shall not be considered a felony for purposes of the  
 22 imposition of sentencing enhancements pursuant to the  
 23 provisions of Section 31-18-17 NMSA 1978."

24 Section 3. Section 29-11A-4.1 NMSA 1978 (being Laws 2000,  
 25 Chapter 8, Section 6) is amended to read:

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1 "29-11A-4.1. PROCEDURES WHEN A SEX OFFENDER MOVES FROM  
2 NEW MEXICO TO ANOTHER STATE.--

3 A. If a sex offender intends to move from New  
4 Mexico to another state, no later than thirty days prior to  
5 moving to the other state, he shall:

6 (1) notify the county sheriff of the county he  
7 resides in that he is moving to the other state; and

8 (2) provide the county sheriff with a written  
9 notice that identifies the state to which the sex offender is  
10 moving.

11 B. Within five days of receiving a sex offender's  
12 written notice of intent to move to another state, the county  
13 sheriff shall transmit that information to the department of  
14 public safety. Within five days of receiving that information  
15 from a county sheriff, the department shall contact the state  
16 agency responsible for registering sex offenders in the state  
17 to which the sex offender is moving. The department shall  
18 provide that state agency with registration information  
19 regarding the sex offender. The department shall also obtain  
20 information regarding registration requirements for sex  
21 offenders in the state to which the sex offender is moving.  
22 The department shall provide the sex offender with written  
23 notification of the registration requirements in the state to  
24 which the sex offender is moving.

25 C. A sex offender who willfully fails to comply

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1 with the requirements set forth in this section is guilty of a  
 2 [~~misdemeanor and shall be punished by imprisonment for a~~  
 3 ~~definite term less than one year or a fine of not more than one~~  
 4 ~~thousand dollars (\$1,000) or both] fourth degree felony and  
 5 shall be sentenced pursuant to the provisions of Section  
 6 31-18-15 NMSA 1978."~~

7 Section 4. Section 29-11A-5 NMSA 1978 (being Laws 1995,  
 8 Chapter 106, Section 5, as amended) is amended to read:

9 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--  
 10 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN  
 11 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

12 A. A county sheriff shall maintain a local registry  
 13 of sex offenders in his jurisdiction required to register  
 14 pursuant to the provisions of the Sex Offender Registration and  
 15 Notification Act.

16 B. The county sheriff shall forward:

17 (1) registration information obtained from sex  
 18 offenders to the department of public safety. The initial  
 19 registration information and any new registration information  
 20 subsequently obtained from a sex offender shall be forwarded by  
 21 the county sheriff no later than ten working days after the  
 22 information is obtained from a sex offender. If the department  
 23 of public safety receives information regarding a sex offender  
 24 from a governmental entity other than a county sheriff, the  
 25 department shall send that information to the sheriff for the

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1 county in which the sex offender resides; and

2 (2) samples of DNA obtained from sex offenders  
3 to the administrative center for the sex offender DNA  
4 identification system pursuant to the provisions of the DNA  
5 Identification Act.

6 C. The department of public safety shall maintain a  
7 central registry of sex offenders required to register pursuant  
8 to the provisions of the Sex Offender Registration and  
9 Notification Act. The department shall participate in the  
10 national sex offender registry administered by the United  
11 States department of justice. The department shall send  
12 conviction information and fingerprints for all sex offenders  
13 registered in New Mexico to the national sex offender registry  
14 administered by the United States department of justice and to  
15 the federal bureau of investigation.

16 D. The department of public safety shall retain  
17 registration information regarding a sex [offenders] offender  
18 convicted for any of the following sex offenses for [a period  
19 of twenty years following the sex offender's conviction,  
20 release from prison or release from probation or parole,  
21 whichever occurs later] the entirety of his natural life:

22 (1) criminal sexual penetration in the first,  
23 [~~or~~] second or third degree, as provided in Section 30-9-11  
24 NMSA 1978;

25 (2) criminal sexual contact of a minor in the

1 second, ~~or~~ third or fourth degree, as provided in Section  
2 30-9-13 NMSA 1978;

3 (3) sexual exploitation of children, as  
4 provided in Section 30-6A-3 NMSA 1978;

5 (4) kidnapping, as provided in Section 30-4-1  
6 NMSA 1978, when the victim is less than eighteen years of age  
7 and the offender is not a parent of the victim; ~~or~~

8 (5) criminal sexual contact in the fourth  
9 degree, as provided in Section 30-9-12 NMSA 1978; or

10 ~~(5)]~~ (6) attempt to commit any of the sex  
11 offenses set forth in Paragraphs (1) through ~~(4)]~~ (5) of this  
12 subsection, as provided in Section 30-28-1 NMSA 1978.

13 E. The department of public safety shall retain  
14 registration information regarding a sex ~~offenders]~~ offender  
15 convicted for the following offenses for a period of ten years  
16 following the sex offender's conviction, release from prison or  
17 release from probation or parole, whichever occurs later:

18 (1) criminal sexual penetration in the ~~third~~  
19 ~~or~~ fourth degree, as provided in Section 30-9-11 NMSA 1978;

20 ~~[(2) criminal sexual contact in the fourth~~  
21 ~~degree, as provided in Section 30-9-12 NMSA 1978;~~

22 ~~(3) criminal sexual contact of a minor in the~~  
23 ~~fourth degree, as provided in Section 30-9-13 NMSA 1978;~~

24 ~~(4)]~~ (2) sexual exploitation of children by  
25 prostitution, as provided in Section 30-6A-4 NMSA 1978;

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1                   ~~[(5)]~~ (3) false imprisonment, as provided in  
2 Section 30-4-3 NMSA 1978, when the victim is less than eighteen  
3 years of age and the offender is not a parent of the victim;

4                   (4) aggravated indecent exposure, as provided  
5 in Section 30-9-14.3 NMSA 1978;

6                   (5) enticement of child, as provided in  
7 Section 30-9-1 NMSA 1978;

8                   (6) incest, as provided in Section 30-10-3  
9 NMSA 1978, when the victim is less than eighteen years of age;

10                   ~~[(6)]~~ (7) solicitation to commit criminal  
11 sexual contact of a minor in the second, third or fourth  
12 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;  
13 or

14                   ~~[(7)]~~ (8) attempt to commit any of the sex  
15 offenses set forth in Paragraphs (1) through ~~[(5)]~~ (6) of this  
16 subsection, as provided in Section 30-28-1 NMSA 1978.

17                   F. Notwithstanding the provisions of Subsection E  
18 of this section, if a sex offender is convicted a second or  
19 subsequent time for a sex offense set forth in that subsection,  
20 the department of public safety shall retain information  
21 regarding the sex offender for the entirety of the sex  
22 offender's natural life.

23                   ~~[F.]~~ G. The department of public safety shall adopt  
24 rules necessary to carry out the provisions of the Sex Offender  
25 Registration and Notification Act. Rules necessary for the

1 collection of DNA samples and the administration and operation  
2 of the sex offender DNA identification system shall be adopted  
3 by the DNA identification system oversight committee pursuant  
4 to the provisions of the DNA Identification Act."

5 Section 5. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,  
6 Chapter 19, Section 8, as amended) is amended to read:

7 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING  
8 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY  
9 NOTIFICATION--INTERNET WEB SITE.--

10 A. If a sex offender is convicted of one of the  
11 following sex offenses, the county sheriff shall forward  
12 registration information obtained from the sex offender to the  
13 district attorney for the judicial district in which the sex  
14 offender resides and, if the sex offender is a resident of a  
15 municipality, the chief law enforcement officer for the  
16 municipality in which the sex offender resides:

17 (1) criminal sexual penetration in the first,  
18 [~~or~~] second or third degree, as provided in Section 30-9-11  
19 NMSA 1978;

20 (2) criminal sexual contact of a minor in the  
21 second, third or fourth degree, as provided in Section 30-9-13  
22 NMSA 1978;

23 (3) sexual exploitation of children, as  
24 provided in Section 30-6A-3 NMSA 1978;

25 (4) sexual exploitation of children by

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1 prostitution, as provided in Section 30-6A-4 NMSA 1978; or

2 (5) attempt to commit any of the sex offenses  
3 set forth in Paragraphs (1) through (4) of this subsection, as  
4 provided in Section 30-28-1 NMSA 1978.

5 B. A person who wants to obtain registration  
6 information regarding sex offenders described in Subsection A  
7 of this section may request that information from the:

8 (1) sheriff for the county in which the sex  
9 offenders reside;

10 (2) chief law enforcement officer for the  
11 municipality in which the sex offenders reside;

12 (3) district attorney for the judicial  
13 district in which the sex offenders reside; or

14 (4) secretary of public safety.

15 C. Upon receiving a request for registration  
16 information regarding sex offenders described in Subsection A  
17 of this section, the county sheriff, chief municipal law  
18 enforcement officer, district attorney or secretary of public  
19 safety shall provide that registration information, with the  
20 exception of a sex offender's social security number and DNA  
21 information, within a reasonable period of time, and no later  
22 than seven days after receiving the request.

23 D. Within seven days of receiving registration  
24 information from a sex offender described in Subsection A of  
25 this section, the county sheriff shall contact every licensed

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1 daycare center, elementary school, middle school and high  
 2 school within a one-mile radius of the sex offender's residence  
 3 and provide them with the sex offender's registration  
 4 information, with the exception of the sex offender's social  
 5 security number and DNA information.

6 E. The department of public safety [~~may~~] shall  
 7 establish and manage an internet web site that provides the  
 8 public with registration information regarding sex offenders  
 9 described in Subsection A of this section, except that the  
 10 department of public safety shall not provide registration  
 11 information on the internet web site regarding a sex offender  
 12 who was less than eighteen years of age when he committed the  
 13 sex offense for which he was convicted as a youthful offender,  
 14 as provided in Section 32A-2-3 NMSA 1978, unless at the time of  
 15 sentencing, the court made a finding that the sex offender is  
 16 not amenable to treatment and is a danger to the community.

17 The registration information provided to the public pursuant to  
 18 this subsection shall not include a sex offender's social  
 19 security number or DNA information or a sex offender's place of  
 20 employment, unless the sex offender's employment requires him  
 21 to have direct contact with children."

22 Section 6. Section 29-11A-7 NMSA 1978 (being Laws 1995,  
 23 Chapter 106, Section 7, as amended) is amended to read:

24 "29-11A-7. NOTICE TO SEX OFFENDERS OF DUTY TO  
 25 REGISTER.--

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1           A. A court shall provide a sex offender convicted  
2 in that court with written notice of his duty to register  
3 pursuant to the provisions of the Sex Offender Registration and  
4 Notification Act. The written notice shall be included in  
5 judgment and sentence forms provided to the sex offender. The  
6 written notice shall inform the sex offender that he is  
7 required to:

8                   (1) [~~to~~] register with the county sheriff for  
9 the county in which the sex offender will reside or, if the sex  
10 offender will not have an established residence, with the  
11 county sheriff for each county in which the sex offender will  
12 live or be temporarily located pursuant to the provisions of  
13 the Sex Offender Registration and Notification Act;

14                   (2) [~~to~~] report subsequent changes of address  
15 pursuant to the provisions of the Sex Offender Registration and  
16 Notification Act;

17                   (3) [~~to~~] notify the county sheriff of the  
18 county he resides in if the sex offender intends to move to  
19 another state and that the sex offender is required to register  
20 in the other state pursuant to the provisions of the Sex  
21 Offender Registration and Notification Act; [~~and~~]

22                   (4) disclose his status as a sex offender in  
23 writing when he begins employment, begins a vocation or enrolls  
24 as a student at an institution of higher education in New  
25 Mexico to the county sheriff for the county in which the

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[bracketed material] = delete

1 institution of higher education is located and to the law  
2 enforcement entity and registrar for the institution of higher  
3 education pursuant to the provisions of the Sex Offender  
4 Registration and Notification Act;

5 (5) provide written notice of any change  
6 regarding his employment, vocation or enrollment status at an  
7 institution of higher education to the county sheriff, the law  
8 enforcement entity and the registrar pursuant to the provisions  
9 of the Sex Offender Registration and Notification Act;

10 (6) disclose his status as a sex offender in  
11 writing when he enrolls as a student at a private or public  
12 school in New Mexico, to the county sheriff for the county in  
13 which the school is located and to the principal of the school  
14 pursuant to the provisions of the Sex Offender Registration and  
15 Notification Act;

16 (7) provide written notice of any change  
17 regarding his enrollment status at a public or private school  
18 in New Mexico to the county sheriff and the principal of the  
19 school pursuant to the provisions of the Sex Offender  
20 Registration and Notification Act;

21 (8) disclose his status as a sex offender in  
22 writing to his employer, supervisor or other person similarly  
23 situated, when he begins employment, begins a vocation or  
24 volunteers his services, regardless of whether the sex offender  
25 receives payment or other compensation, pursuant to the

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1 provisions of the Sex Offender Registration and Notification  
2 Act; and

3 [~~(4)~~ (9)] read and sign a form that  
4 indicates that the sex offender has received the written notice  
5 and that a responsible court official, designated by the chief  
6 judge for that judicial district, has explained the written  
7 notice to the sex offender.

8 B. The corrections department, a municipal or  
9 county jail or a detention center at the time of release of a  
10 sex offender in [~~the department's~~] its custody, shall provide a  
11 written notice to the sex offender of his duty to register,  
12 pursuant to the provisions of the Sex Offender Registration and  
13 Notification Act. The written notice shall inform the sex  
14 offender that he is required to:

15 (1) [~~to~~] register with the county sheriff for  
16 the county in which the sex offender will reside or, if the sex  
17 offender will not have an established residence, with the  
18 county sheriff for each county in which the sex offender will  
19 live or be temporarily located pursuant to the provisions of  
20 the Sex Offender Registration and Notification Act;

21 (2) [~~to~~] report subsequent changes of address  
22 pursuant to the provisions of the Sex Offender Registration and  
23 Notification Act;

24 (3) [~~to~~] notify the county sheriff of the  
25 county he resides in if the sex offender intends to move to

1 another state and that the sex offender is required to register  
2 in the other state pursuant to the provisions of the Sex  
3 Offender Registration and Notification Act; ~~and~~

4 (4) disclose his status as a sex offender in  
5 writing when he begins employment, begins a vocation or enrolls  
6 as a student at an institution of higher education in New  
7 Mexico to the county sheriff for the county in which the  
8 institution of higher education is located and to the law  
9 enforcement entity and registrar for the institution of higher  
10 education pursuant to the provisions of the Sex Offender  
11 Registration and Notification Act;

12 (5) provide written notice of any change  
13 regarding his employment, vocation or enrollment status at an  
14 institution of higher education to the county sheriff, the law  
15 enforcement entity and the registrar pursuant to the provisions  
16 of the Sex Offender Registration and Notification Act;

17 (6) disclose his status as a sex offender in  
18 writing when he enrolls as a student at a private or public  
19 school in New Mexico, to the county sheriff for the county in  
20 which the school is located and to the principal of the school  
21 pursuant to the provisions of the Sex Offender Registration and  
22 Notification Act;

23 (7) provide written notice of any change  
24 regarding his enrollment status at a public or private school  
25 in New Mexico to the county sheriff and the principal of the

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1 school pursuant to the provisions of the Sex Offender  
2 Registration and Notification Act;

3 (8) disclose his status as a sex offender in  
4 writing to his employer, supervisor or other person similarly  
5 situated, when he begins employment, begins a vocation or  
6 volunteers his services, regardless of whether the sex offender  
7 receives payment or other compensation, pursuant to the  
8 provisions of the Sex Offender Registration and Notification  
9 Act; and

10 [~~(4)~~ to] (9) read and sign a form that  
11 indicates that the sex offender has received the written notice  
12 and that a responsible corrections department official,  
13 designated by the secretary of corrections, or a responsible  
14 municipal or county jail official or detention center official  
15 has explained the written notice to the sex offender.

16 C. A court, ~~[or]~~ the corrections department, a  
17 municipal or county jail or a detention center shall also  
18 provide written notification regarding a sex offender's release  
19 to the sheriff of the county in which the sex offender is  
20 released and to the department of public safety.

21 D. The department of public safety, at the time it  
22 is notified by officials from another state that a sex offender  
23 will be establishing residence in New Mexico, shall provide  
24 written notice to the sex offender of his duty to register  
25 pursuant to the provisions of the Sex Offender Registration and

1 Notification Act."

2 Section 7. A new section of the Sex Offender Registration  
3 and Notification Act is enacted to read:

4 "[NEW MATERIAL] STATE PREEMPTION--SAVING CLAUSE.--

5 A. The state preempts the field of sex offender  
6 registration and notification. Cities, counties, home rule  
7 municipalities and other political subdivisions of the state  
8 are prohibited from adopting or continuing in effect any  
9 ordinance, rule, regulation, resolution or statute on sex  
10 offender registration and notification.

11 B. After January 18, 2005, cities, counties, home  
12 rule municipalities and other political subdivisions of the  
13 state are prohibited from adopting or amending an ordinance,  
14 rule, regulation or resolution on sex offender registration and  
15 notification. An ordinance in effect on January 18, 2005 shall  
16 continue in force and effect until repealed; provided that the  
17 ordinance shall only continue in force and effect with regard  
18 to sex offenders who are required to register pursuant to the  
19 provisions of the ordinance, but who are not required to  
20 register pursuant to the provisions of the Sex Offender  
21 Registration and Notification Act. All other sex offenders  
22 shall register pursuant to the provisions of the Sex Offender  
23 Registration and Notification Act."

24 Section 8. A new section of the Sex Offender Registration  
25 and Notification Act is enacted to read:

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underscoring material = new  
[bracketed material] = delete

1 "[NEW MATERIAL] SEVERABILITY.--If any part or application  
2 of the Sex Offender Registration and Notification Act is held  
3 invalid, the remainder of that act and its application to other  
4 situations or persons shall not be affected."

5 Section 9. Section 29-16-2 NMSA 1978 (being Laws 1997,  
6 Chapter 105, Section 2, as amended) is amended to read:

7 "29-16-2. PURPOSE OF ACT.--The purpose of the DNA  
8 Identification Act is to:

9 A. establish a DNA identification system for  
10 covered offenders;

11 B. facilitate the use of DNA records by local,  
12 state and federal law enforcement agencies in the:

13 (1) identification, detection or exclusion of  
14 persons in connection with criminal investigations; and

15 (2) registration of sex offenders required to  
16 register pursuant to the provisions of the Sex Offender  
17 Registration and Notification Act;

18 C. establish a missing persons DNA identification  
19 system consisting of the following DNA indexes:

20 (1) unidentified persons;  
21 (2) unidentified human remains; and  
22 (3) relatives of, or known reference samples  
23 from, missing persons; and

24 D. facilitate the use of DNA records by local,  
25 state and federal law enforcement agencies and the state

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1 medical investigator in the identification and location of  
2 missing and unidentified persons or human remains."

3 Section 10. Section 29-16-3 NMSA 1978 (being Laws 1997,  
4 Chapter 105, Section 3, as amended) is amended to read:

5 "29-16-3. DEFINITIONS.--As used in the DNA Identification  
6 Act:

7 A. "administrative center" means the law  
8 enforcement agency or unit that administers and operates the  
9 DNA identification system;

10 B. "DNA oversight committee" means the DNA  
11 identification system oversight committee;

12 C. "CODIS" means the federal bureau of  
13 investigation's national DNA index system for storage and  
14 exchange of DNA records submitted by forensic DNA laboratories;

15 D. "covered offender" means any person convicted of  
16 a felony offense as an adult under the Criminal Code, the Motor  
17 Vehicle Code or the constitution of New Mexico or convicted as  
18 an adult pursuant to youthful offender or serious youthful  
19 offender proceedings under the Children's Code or a sex  
20 offender required to register pursuant to the provisions of the  
21 Sex Offender Registration and Notification Act;

22 E. "department" means the department of public  
23 safety;

24 F. "DNA" means deoxyribonucleic acid as the basis  
25 of human heredity;

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1           G. "DNA identification system" means the DNA  
2 identification system established pursuant to the DNA  
3 Identification Act;

4           H. "DNA records" means the results of DNA testing  
5 and related information;

6           I. "DNA testing" means a forensic DNA analysis that  
7 includes restriction fragment length polymorphism, polymerase  
8 chain reaction or other valid methods of DNA typing performed  
9 to obtain identification characteristics of samples;

10          J. "fund" means the DNA identification system fund;

11          K. "missing persons DNA identification system"  
12 means the missing persons DNA identification system established  
13 by the DNA Identification Act; ~~and~~

14          L. "sample" means a sample of biological material  
15 sufficient for DNA testing; and

16          M. "sex offender DNA identification system" means  
17 the sex offender DNA identification system established by the  
18 DNA Identification Act."

19          Section 11. Section 29-16-4 NMSA 1978 (being Laws 1997,  
20 Chapter 105, Section 4, as amended) is amended to read:

21          "29-16-4. ADMINISTRATIVE CENTER--POWERS AND DUTIES--  
22 TRANSFER TO OTHER LAW ENFORCEMENT AGENCY.--

23           A. The administrative center shall be an  
24 appropriate unit of the department or such other qualified New  
25 Mexico law enforcement agency as the secretary of public safety

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1 may designate in accordance with this section.

2 B. The administrative center shall:

3 (1) establish and administer the DNA  
4 identification system. The DNA identification system shall  
5 provide for collection, storage, DNA testing, maintenance and  
6 comparison of samples and DNA records for forensic and  
7 humanitarian purposes. Those purposes shall include generation  
8 of investigative leads, statistical analysis of DNA profiles  
9 and identification of missing persons and unidentified human  
10 remains. Procedures used for DNA testing shall be compatible  
11 with the procedures the federal bureau of investigation has  
12 specified, including comparable test procedures, laboratory  
13 equipment, supplies and computer software. Procedures used  
14 shall meet or exceed the provisions of the federal DNA  
15 Identification Act of 1994 regarding minimum standards for  
16 state participation in CODIS, including minimum standards for  
17 the acceptance, security and dissemination of DNA records;

18 (2) coordinate sample collection activities;

19 (3) perform or contract for DNA testing;

20 (4) serve as a repository for samples and DNA  
21 records;

22 (5) act as liaison with the federal bureau of  
23 investigation for purposes of CODIS;

24 (6) adopt rules and procedures governing:

25 (a) sample collection;

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- 1 (b) DNA testing;
- 2 (c) the DNA identification system and
- 3 DNA records; and
- 4 (d) the acceptance, security and
- 5 dissemination of DNA records;
- 6 (7) be reimbursed for, pursuant to the DNA
- 7 Identification Act, the costs of sample collection and DNA
- 8 testing of samples taken for the purposes of the identification
- 9 of missing persons and unidentified human remains; ~~and~~
- 10 (8) establish and administer the missing
- 11 persons DNA identification system as a part of the DNA
- 12 identification system; and
- 13 (9) establish and administer the sex offender
- 14 DNA identification system as part of the DNA identification
- 15 system.

16 C. The secretary of public safety may designate,

17 pursuant to a joint powers agreement, the crime laboratory of

18 the police department for the largest municipality in a class A

19 county having a population of more than two hundred fifty

20 thousand at the most recent federal decennial census to act as

21 the administrative center.

22 D. The secretary of public safety may designate,

23 pursuant to a joint powers agreement, any other law enforcement

24 agency to act as administrative center upon recommendation of

25 five voting members of the DNA advisory committee."

1           Section 12. Section 29-16-5 NMSA 1978 (being Laws 1997,  
2 Chapter 105, Section 5, as amended) is amended to read:

3           "29-16-5. DNA OVERSIGHT COMMITTEE--CREATED--POWERS AND  
4 DUTIES.--

5           A. The "DNA identification system oversight  
6 committee" is created. The DNA oversight committee shall be  
7 composed of nine voting members as follows:

8                   (1) a scientific representative from the  
9 department crime laboratory appointed by the secretary of  
10 public safety;

11                   (2) a scientific representative from the crime  
12 laboratory of the police department for the largest  
13 municipality in a class A county having a population of more  
14 than two hundred fifty thousand at the most recent federal  
15 decennial census;

16                   (3) the secretary of corrections or [~~his~~] the  
17 secretary's designated representative;

18                   (4) the state medical investigator or [~~his~~]  
19 the investigator's designated representative;

20                   (5) the attorney general or [~~his~~] the attorney  
21 general's designated representative;

22                   (6) the president of the district attorneys  
23 association or [~~his~~] the president's designated representative;

24                   (7) the chief public defender or [~~his~~] the  
25 chief public defender's designated representative;

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1 (8) the president of the New Mexico criminal  
2 defense lawyers association or [~~his~~] the president's designated  
3 representative; and

4 (9) the head of the administrative center or  
5 [~~his~~] the head's designated representative.

6 B. The DNA oversight committee shall adopt rules  
7 and procedures regarding the administration and operation of  
8 the DNA identification system.

9 C. The administrative center shall review and make  
10 recommendations to the DNA oversight committee regarding rules  
11 and procedures for the administration and operation of the DNA  
12 identification system.

13 D. The DNA oversight committee shall oversee the  
14 establishment and administration of the missing persons DNA  
15 identification system as part of the DNA identification system.

16 E. The DNA oversight committee shall adopt rules  
17 and procedures regarding the administration and operation of  
18 the missing persons DNA identification system as part of the  
19 DNA identification system.

20 F. The DNA oversight committee shall oversee the  
21 establishment and administration of the sex offender DNA  
22 identification system as part of the DNA identification system.

23 G. The DNA oversight committee shall adopt rules  
24 and procedures regarding the administration and operation of  
25 the sex offender DNA identification system as part of the DNA

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1 identification system."

2 Section 13. Section 29-16-6 NMSA 1978 (being Laws 1997,  
3 Chapter 105, Section 6, as amended) is amended to read:

4 "29-16-6. COLLECTION OF SAMPLES.--

5 A. A covered offender shall provide one or more  
6 samples to the administrative center, as follows:

7 (1) a covered offender convicted on or after  
8 July 1, 1997 shall provide a sample immediately upon request of  
9 the corrections department so long as the request is made  
10 before release from any correctional facility or, if the  
11 covered offender is not sentenced to incarceration, before the  
12 end of any period of probation or other supervised release;

13 (2) a covered offender incarcerated on or  
14 after July 1, 1997 shall provide a sample immediately upon  
15 request of the corrections department so long as the request is  
16 made before release from any correctional facility; ~~and~~

17 (3) a covered offender on probation or other  
18 supervised release on or after July 1, 1997 shall provide a  
19 sample immediately upon request of the corrections department  
20 so long as the request is made before the end of any period of  
21 probation or other supervised release; and

22 (4) a covered offender required to register or  
23 renew his registration pursuant to the provisions of the Sex  
24 Offender Registration and Notification Act shall provide a  
25 sample immediately upon request by the county sheriff located

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1 in any county in which the sex offender is required to  
2 register, unless the sex offender provided a sample while in  
3 the custody of the corrections department or to the county  
4 sheriff of another county in New Mexico in which the sex  
5 offender is registered.

6 B. Samples from unidentified persons or relatives  
7 of a missing person shall be provided to the administrative  
8 center, as follows:

9 (1) upon the completion of a permission to  
10 search form authorizing the collection of a DNA sample;

11 (2) upon the receipt of a properly executed  
12 search warrant; or

13 (3) upon the issuance of a court order.

14 C. Samples from unidentified human remains shall be  
15 provided by the state medical investigator.

16 D. Samples of known reference materials from  
17 missing persons shall be provided by the investigating law  
18 enforcement agency."

19 Section 14. APPLICABILITY.--The provisions of this 2005  
20 version of the Sex Offender Registration and Notification Act  
21 are applicable to:

22 A. a person convicted of a sex offense on or after  
23 July 1, 2005; and

24 B. a person convicted of a sex offense prior to  
25 July 1, 2005 and who, on July 1, 2005, was still incarcerated,

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1 on probation or on parole for commission of that sex offense.

2 Section 15. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2005.

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